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Remarks

The Office Action mailed April 13, 2004 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-18 are now pending in this application. Claims 1-18 stand rejected.

Claim 11 is amended to correct dependency. Claim 18 is amended to correct grammatical errors.

The rejection of Claims 1-3, 5, 6, 7 and 8 under 35 U.S.C. § 103 (a) as being unpatentable over Zabriskie (U.S. Design Patent No. 187,666) in view of Perkins et al. (U.S. Patent No. 6,257,440) is respectfully traversed.

Zabriskie describes an ornamental design for a washing basket and dispenser for tableware. The washing basket includes a number of cylindrical cups joined together with each cup having a plurality of round holes around a portion of the outwardly facing sides.

Perkins et al. describe a bucket including a pivotally mounted strap handle. The handle (20) is attached using a rib (56) and groove (230) assembly that constitute mateable elements that allow the user to position the strap in various positions.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Zabriskie according to the teachings of Perkins et al. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention absent some teaching, suggestion, or incentive supporting the combination. Neither Zabriskie nor Perkins et al., considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection appears to be based on a combination of teachings

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selected from multiple patents in an attempt to reconstruct the structures recited in the presently pending claims.

Applicants respectfully submit that there is no motivation for one skilled in the art to combine Zabriskie with Perkins et al. In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Perkins et al., which teaches a handle for a bucket, would not logically have commended itself to an inventor's attention in considering handles for a silverware basket. For these reasons, Applicants respectfully requests that the Section 103 rejection be withdrawn.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Moreover, the Federal Circuit has determined that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in

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the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In the present case, Zabriskie describes an ornamental design for a washing basket for tableware. Adding a movable handle to Zabriskie necessarily alters the ornamental design of the basket.

Claim 1 recites a basket assembly for a dishwashing machine including "a basket defining at least one compartment having a lattice structure for spray action cleaning of items therein; and a handle attached to said basket at opposite ends thereof, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware".

Neither Zabriskie nor Perkins et al., considered alone or in combination, describe or suggest a basket defining at least one compartment having a lattice structure for spray action cleaning of items therein; and a handle attached to the basket at opposite ends thereof, the handle

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selectively positionable between a first position and a second position, one of the first and second positions allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Moreover, neither Zabriskie nor Perkinset al., considered alone or in combination, describe or suggest a basket assembly having a handle selectively positionable between a first position and a second position. Rather, Zabriskie describes an ornamental design for a basket having a fixed handle, and Perkins et al. describe a handle bracket for a bucket rather than for a dishwasher basket.

For the reasons set forth above, Claim 1 is submitted to be patentable over Zabriskie in view of Perkins et al.

Claims 2, 3, 5, 7, and 8 depend from Claim 1. When the recitations of Claims 2, 3, 5, 7, and 8 are considered in combination with the recitations of Claim 1, Applicants submit that Claims 2, 3, 5, 7, and 8 are also patentable over Zabriskie in view of Perkins et al.

For the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-3, 5, 6, 7, and 8 be withdrawn.

The rejection of Claim 4 under 35 U.S.C. § 103 (a) as being unpatentable over Zabriskie in view of Perkins et al. and further in view of Crawford (U.S. Patent No. 766,671) is respectfully traversed.

Zabriskie and Perkins et al. are described above. Crawford describes a handle for a vessel. The handle includes a bail having hooked ends that fit into loops (d) in a ring about the upper circumference of the vessel. A contoured grip is provided at the approximate center of the bail.

Claim 4 depends from Claim 1 which recites a basket assembly for a dishwashing machine including "a basket defining at least one compartment having a lattice structure for spray action cleaning of items therein; and a handle attached to said basket at opposite ends

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thereof, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware”.

None of Zabriskie, Perkins et al., and Crawford, considered alone or in combination, describe or suggest a basket defining at least one compartment having a lattice structure for spray action cleaning of items therein; and a handle attached to the basket at opposite ends thereof, the handle selectively positionable between a first position and a second position, one of the first and second positions allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Moreover, none of Zabriskie, Perkins et al., and Crawford, considered alone or in combination, describe or a basket assembly having a handle selectively positionable between a first position and a second position. Rather, Zabriskie describes an ornamental design for a basket having a fixed handle, Perkins et al. describe a handle bracket for a bucket rather than for a dishwasher basket, and Crawford describes a handle for a vessel having a contoured grip.

For the reasons set forth above, Claim 1 is submitted to be patentable over Zabriskie in view of Perkins et al. and further in view of Crawford.

Claim 4 depends from Claim 1. When the recitations of Claim 4 are considered in combination with the recitations of Claim 1, Applicants submit that Claim 4 is also patentable over Zabriskie in view of Perkins et al. and further in view of Crawford.

For the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claim 4 be withdrawn.

The rejection of Claim 9 under 35 U.S.C. § 103 (a) as being unpatentable over Zabriskie in view of Perkins et al. and further in view of Allison (U.S. Patent No. 766,671) is respectfully traversed.

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Zabriskie and Perkins et al. are described above. Allison describes a lifting device for glass battery jars. The lifting device includes a transverse handle (5), bent downwardly at each end to form depending legs (6), each of which is provided with a laterally extended wood shoe (7) at a lower end thereof. A transverse brace (8) is provided intermediately of the length of the legs (6). A spring (14) and toggle levers (9) provide spring action for the shoes (7). The handle (5) is shown as having a gripper portion that has upstanding sides creating a channel-shaped cross section.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Zabriskie according to the teachings of Perkins et al. and Allison. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention absent some teaching, suggestion, or incentive supporting the combination. None of Zabriskie, Perkins et al., and Allison, considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection appears to be based on a combination of teachings selected from multiple patents in an attempt to reconstruct the structures recited in the presently pending claims.

In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Neither Perkins et al., which teaches a handle for a bucket, nor Allison, which teaches a lifting device for glass battery jars, would logically have commended themselves to an inventor's attention in considering handles for a silverware basket. For these reasons, Applicants respectfully requests that the Section 103 rejection be withdrawn.

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As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levensgood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Moreover, the Federal Circuit has determined that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). A prior art reference must be considered in its entirety, i.e., as a whole,

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including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Claim 9 depends from Claim 1 which recites a basket assembly for a dishwashing machine including "a basket defining at least one compartment having a lattice structure for spray action cleaning of items therein; and a handle attached to said basket at opposite ends thereof, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware".

None of Zabriskie, Perkins et al., and Allison, considered alone or in combination, describe or suggest a basket defining at least one compartment having a lattice structure for spray action cleaning of items therein; and a handle attached to the basket at opposite ends thereof, the handle selectively positionable between a first position and a second position, one of the first and second positions allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Moreover, none of Zabriskie, Perkins et al., and Allison, considered alone or in combination, describe or suggest a basket assembly having a handle selectively positionable between a first position and a second position. Rather, Zabriskie describes an ornamental design for a basket having a fixed handle, Perkins et al. describe a handle bracket for a bucket rather than for a dishwasher basket, and Allison describes a lifting device for a glass battery jar that includes a handle.

For the reasons set forth above, Claim 1 is submitted to be patentable over Zabriskie in view of Perkins et al. and further in view of Allison.

Claim 9 depends from Claim 1. When the recitations of Claim 9 are considered in combination with the recitations of Claim 1, Applicants submit that Claim 9 is also patentable over Zabriskie in view of Perkins et al. and further in view of Allison.

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For the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claim 9 be withdrawn.

The rejection of Claims 10, 12, 17, and 18 under 35 U.S.C. § 103 (a) as being unpatentable over Maslow (U.S. Design Patent No. 202,569) in view of Zabriskie and further in view of Perkins et al. is respectfully traversed.

Zabriskie and Perkins et al. are described above. Maslow describes an ornamental design for a silverware basket. The basket is rectangular in shape and has a plurality of apertures on the long sides of the rectangle. The basket includes no handle.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Maslow according to the teachings of Zabriskie and Perkins et al. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention absent some teaching, suggestion, or incentive supporting the combination. None of Maslow, Zabriskie, and Perkins et al., considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection appears to be based on a combination of teachings selected from multiple patents in an attempt to reconstruct the structures recited in the presently pending claims.

In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Maslow and Zabriskie teach ornamental designs. Perkins et al. teaches a handle for a bucket. None of these would logically have commended themselves to an inventor's attention in considering handles for a silverware basket. Further, the number of prior art references amassed and sought to be combined in this

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case is considerable. It is notable that none of the art teaches a rotating handle for a silverware basket. Applicants submit that this, in and of itself, is evidence of the non-obviousness of the subject matter of the presently pending claims. For these reasons, Applicants respectfully requests that the Section 103 rejection be withdrawn.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Moreover, the Federal Circuit has determined that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

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In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Claim 10 recites a basket assembly for a dishwashing machine including "a substantially rectangular silverware basket comprising first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, said second length greater than said first length, each of said side walls having a structure to permit water spray action cleaning of items therein; and a handle attached to and extending between said lateral side walls and comprising a contoured gripper portion, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware".

None of Maslow, Zabriskie, and Perkins et al., considered alone or in combination, describe or suggest a basket assembly for a dishwashing machine that includes a substantially rectangular silverware basket including first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, the second length greater than the first length, each of the side walls having a structure to permit water spray action cleaning of items therein, and a handle attached to and extending between the lateral side walls, the handle including a contoured gripper portion, and wherein the handle is selectively positionable between a first position and a second position, one of the first and second positions allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Moreover, none of Maslow, Zabriskie, and Perkins et al., considered alone or in

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combination, describe or suggest a silverware basket having a handle selectively positionable between a first position and a second position. Rather, Maslow describes an ornamental design for a rectangular silverware basket not having a handle, Zabriskie describes an ornamental design for a basket having a fixed handle, and Perkins et al. describe a handle bracket for a bucket rather than for a dishwasher basket.

For the reasons set forth above, Claim 10 is submitted to be patentable over Maslow in view of Zabriskie and further in view of Perkins et al.

Claim 12 depends from Claim 10. When the recitations of Claim 12 are considered in combination with the recitations of Claim 10, Applicants submit that Claim 12 is also patentable over Maslow in view of Zabriskie and further in view of Perkins et al.

Claim 17 recites a basket assembly for a dishwashing machine including "a silverware basket defining a longitudinally extending silverware compartment configured for spray action cleaning of items therein; and a handle attached to said basket and extending longitudinally above said compartment in a first position, said handle movable to a second position allowing substantially unobstructed access to said compartment for loading and unloading of silverware".

None of Maslow, Zabriskie, and Perkins et al., considered alone or in combination, describe or suggest a silverware basket defining a longitudinally extending silverware compartment configured for spray action cleaning of items therein, and a handle attached to the basket that extends longitudinally above the compartment in a first position, and the handle being movable to a second position allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Moreover, none of Maslow, Zabriskie, and Perkins et al., considered alone or in combination, describe or suggest a handle attached to a silverware basket that is movable from a first position to a second position. Rather, Maslow describes a rectangular silverware basket not having a handle, Zabriskie describes a basket with cylindrical cups and a fixed handle, and Perkins et al. describe a handle bracket for a bucket.

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For the reasons set forth above, Claim 17 is submitted to be patentable over Maslow in view of Zabriskie and further in view of Perkins et al.

Claim 18 recites a basket assembly for a dishwashing machine including "a substantially rectangular silverware basket comprising first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, said second length greater than said first length, each of said side walls configured to permit spray action cleaning of items placed in said basket; a handle bracket attached to each of said lateral side walls; and a pivotally mounted handle attached to each of said lateral side walls at a respective one of said brackets, said handle comprising a gripper portion extending substantially parallel to said longitudinal side walls and substantially centered over said basket in a first position, said handle positionable to a second position wherein said gripper portion is located laterally from the first position, thereby allowing substantially unobstructed access to said compartment for loading and unloading of silverware".

None of Maslow, Zabriskie, and Perkins et al., considered alone or in combination, describe or suggest a basket assembly for a dishwashing machine that includes a substantially rectangular silverware basket including first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, the second length greater than the first length, each of the side walls configured to permit spray action cleaning of items placed in the basket, a handle bracket attached to each of the lateral side walls, and a pivotally mounted handle attached to each of the lateral side walls at a respective one of the brackets, the handle comprising a gripper portion extending substantially parallel to the longitudinal side walls and substantially centered over the basket in a first position, the handle positionable to a second position wherein the gripper portion is located laterally from the first position, thereby allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Moreover, none of Maslow, Zabriskie, and Perkins et al., considered alone or in combination, describe or suggest a pivotally mounted handle attached to each of the lateral side walls of a

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silverware basket. Rather, Maslow describes a rectangular silverware basket not having a handle, Zabriskie describes a basket with cylindrical cups and a fixed handle, and Perkins et al. describe a handle bracket for a bucket.

For the reasons set forth above, Claim 18 is submitted to be patentable over Maslow in view of Zabriskie and further in view of Perkins et al.

Accordingly, for the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 10, 12, 17, and 18 be withdrawn.

The rejection of Claims 11 and 13-16 under 35 U.S.C. § 103 (a) as being unpatentable over Maslow in view of Zabriskie, Perkins et al. and Allison is respectfully traversed.

Maslow, Zabriskie, Perkins et al., and Allison are described above.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Maslow according to the teachings of Zabriskie, Perkins et al., and Allison. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention absent some teaching, suggestion, or incentive supporting the combination. None of Maslow, Zabriskie, Perkins et al., and Allison, considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection appears to be based on a combination of teachings selected from multiple patents in an attempt to reconstruct the structures recited in the presently pending claims.

In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Maslow and Zabriskie teach

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ornamental designs. Perkins et al. teaches a handle for a bucket. Allison teaches a lifting device for glass battery jars. None of these would logically have commended themselves to an inventor's attention in considering handles for a silverware basket. Further, the number of prior art references amassed and sought to be combined in this case is considerable. It is notable that none of the art teaches a rotating handle for a silverware basket. Applicants submit that this, in and of itself, is evidence of the non-obviousness of the subject matter of the presently pending claims. For these reasons, Applicants respectfully requests that the Section 103 rejection be withdrawn.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Moreover, the Federal Circuit has determined that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of

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ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Claims 11 depends from Claim 10 which recites a basket assembly for a dishwashing machine including "a substantially rectangular silverware basket comprising first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, said second length greater than said first length, each of said side walls having a structure to permit water spray action cleaning of items therein; and a handle attached to and extending between said lateral side walls and comprising a contoured gripper portion, said handle selectively positionable between a first position and a second position, one of said first and second positions allowing substantially unobstructed access to said compartment for loading and unloading of silverware".

None of Maslow, Zabriskie, Perkins et al., and Allison, considered alone or in combination, describe or suggest a basket assembly for a dishwashing machine that includes a substantially rectangular silverware basket including first and second lateral side walls having a first length and first and second longitudinal side walls having a second length, the second length greater than the first length, each of the side walls having a structure to permit water spray action cleaning of items therein, and a handle attached to and extending between the lateral side walls,

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the handle including a contoured gripper portion, and wherein the handle is selectively positionable between a first position and a second position, one of the first and second positions allowing substantially unobstructed access to the compartment for loading and unloading of silverware. Moreover, none of Maslow, Zabriskie, Perkins et al., and Allison, considered alone or in combination, describe or suggest a silverware basket having a handle selectively positionable between a first position and a second position. Rather, Maslow describes an ornamental design for a rectangular silverware basket not having a handle, Zabriskie describes an ornamental design for a basket having a fixed handle, Perkins et al. describe a handle bracket for a bucket rather than for a dishwasher basket, and Allison describes a lifting device for glass battery jars.

For the reasons set forth above, Claim 10 is submitted to be patentable over Maslow in view of Zabriskie, Perkins et al., and Allison.

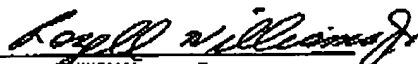
Claims 11 and 13-16 depend from Claim 10. When the recitations of Claims 11 and 13-16 are considered in combination with the recitations of Claim 10, Applicants submit that Claims 11 and 13-16 are also patentable over Maslow in view of Zabriskie, Perkins et al., and Allison.

Accordingly, for the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 11 and 13-16 be withdrawn.

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In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,


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